IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No 544 of 1997

For Approval and Signature:

HON'BLE MR.JUSTICE KSHITIJ R.VYAS
and
HON'BLE MR.JUSTICE AKSHAY H.MEHTA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

DAYARAM TILAK DHARI

Versus

STATE OF GUJARAT

Appearance:

1. Criminal Appeal No. 544 of 1997

MR PM VYAS for Appellant No.

Mr K C Shah, A.PUBLIC PROSECUTOR for Respondent No. 1

CORAM : HON'BLE MR.JUSTICE KSHITIJ R.VYAS
and
HON'BLE MR.JUSTICE AKSHAY H.MEHTA

Date of decision: 13/10/2004

ORAL JUDGEMENT

(Per : HON'BLE MR.JUSTICE KSHITIJ R.VYAS)

The appellant - original accused in this appeal has challenged the judgment and order dated 5.4.1997 passed in Sessions Case No.959 of 1995 by the learned Addl.Sessions Judge, Valsad whereby the appellant was convicted for offence punishable under section 302 IPC and sentenced him to suffer R.I. for life and a fine of Rupees Five hundred. In default, to undergo S.I. for one month. The incident happened on 15.4.1995 at about 7.15 p.m. in the Powerloom Textile factory premises of Chhotubhai, in Umargaon GIDC, where accused inflicted three knife blows to his co-worker Rajendrakumar Yadav. The incident had taken place because of some prior enmity between one Shyam Bihari, brother of the deceased and the accused. The incident was witnessed by another worker PW 6, Ramapathy. Chhotubhai Dodiya, PW 1, the partner of the factory, on being informed by someone, rushed to the scene. On reaching the spot, Chhotubhai noticed that the deceased though alive, lying on the ground profusely bleeding, having sustained injuries. He took the deceased by rickshaw to Mamta Hospital, Umargaon. The Doctor, after examining the injured, advised to take the injured to Vapi Hospital. Accordingly, the injured was taken to Hariya Hospital, Vapi. However, the Doctor declared him dead. The complainant thereafter filed complaint at about 11 or 12 night. PSI, Laljibhai Chaudhary, PW 8, on receipt of the complaint, commenced usual investigation. After collecting sufficient materials against the accused, he filed charge sheet before the learned Judicial Magistrate First Class, Umargaon, who in turn committed the case to the Court of Sessions for trial as the offence punishable under section 302 is exclusively triable by the said Court.

2. The charge Exh.2 was framed against the accused who pleaded not guilty and claimed to be tried. According to him, he was falsely involved in the case.

3. The learned Addl.Sessions Judge, after considering the oral as well as documentary evidence on record, recorded the finding that the prosecution has established charge under section 302 IPC against the accused beyond reasonable doubt. He, therefore, convicted the accused for the said offence and passed the order of sentence as stated above.

4. Mr P M Vyas, learned Advocate appearing for the appellant-accused, after taking us through the entire evidence, submitted that the prosecution has failed to establish the charge under section 302 IPC beyond reasonable doubt. He further submitted that the evidence

of the so-called eye witness Ramapathy, PW 6 as well as Chhotubhai Dodiya, PW 1, is not reliable as there are material discrepancies in their evidence. According to the learned Advocate, the oral evidence is not supported with the medical evidence, inasmuch as, the testimony of PW 6 that the accused gave three knife blows to the deceased. However, the Doctor found only two blows on the person of the deceased. On the other hand, Mr K c Shah, learned APP has supported the reasonings and conclusion arrived at by the trial court in toto.

5. PW 6, Ramapathy is the sole eye witness in the case. According to him, he as well as deceased Rajendrakumar Yadav were working in the factory of Chhotubhai. About the incident, he has stated that the incident happened at about 7.10 p.m. when after completing his duty, he was leaving for home. While he was cleaning his bicycle, he saw the accused Dayaram, who asked him to call Rajendrakumar Yadav. PW 6, thereafter called Rajendrakumar Yadav by waiving his hand. According to this witness, the accused and Rajendrakumar Yadav were thereafter talking near a tea lorry. At that time the accused took out a knife and gave blows on the chest as well as the abdomen and on the backside of Rajendrakumar Yadav. When this witness tried to intervene, the accused gave him threat by giving warning not to intervene, otherwise he would also be killed. Rajendrakumar Yadav has fallen down on the ground and on the other workers gathered there. The accused fled taking advantage of the commotion. This witness became unconscious on seeing the blood. The persons of the factory took the injured to the hospital in a rickshaw.

6. This witness was cross examined in detail. Nothing substantial is brought out from his evidence. He stood the test of the cross examination. He has stated that the deceased and the accused had conversation for about 2 to 3 minutes. However, he could not hear the same because of the noise of the machines in the factory. He stated that the accused was not getting excited while talkint with the deceased. He has given details about the blows given by the accused to the deceased. He has admitted that he had cordial relations with the deceased as well as the accused. He has denied the suggestion that as he was staying with the deceased and his brother, he falsely involved the accused.

7. On going through the evidence of this witness, we find that he is the natural witness and was present at the time of the incident and had witnessed the incident. Nothing has been pointed out to find fault with the

evidence. Learned advocate for the appellant submitted that this witness in his examination-in-chief, has stated that he was not interrogated by the police. Submission of the learned Advocate is that if he was not interrogated by police, the police could not have recorded his statement. Therefore, no reliance can be placed on his evidence. There is no substance in the above submissions. PSI, Mr Chaudhary, PW 8, in his evidence has denied that he has not interrogated PW 6 Ramapathy. He has also denied that he was subsequently produced the said witness. Apart from that, the records do possess statements of PW 6.

8. Dr. Bhagwatiprasad Ramdayal Mittal, PW 5 has corroborated the say of PW 6. Dr. Mittal, who performed the post mortem of the deceased found following two external injuries:

"(i) Incised wound over left axillary region upper portion in the line of nipple, oblique with both ends tapering 2 cms x 1/2 cm and opening in chest cavity.

(ii) Incised (penetrating) wound over lower left axillary region, slight posteriorly with tapering ends, oblique, 1 1/2 cms x 1/2 cms opening in abdominal cavity."

According to Dr. Mittal, these injuries are possible with muddamal knife. In the cross examination, he has denied that the injuries are possible if one falls on a sharp edged stone or metal while running. He however, has stated that if immediate treatment is given, there are chances of survival of the injured. Dr. Mittal has opined about the possible cause of death by stating that the cause of death of this person is shock resulting from-

(i) Injury to Lung and spleen
(ii) Extensive bleeding from lungs and spleen

Merely because the Doctor found two injuries against the three injuries as stated by PW 6, evidence of PW 6 cannot be brushed aside on the ground that his evidence is contrary to the medical evidence.

9. Apart from the evidence of the eye witness, the prosecution has also brought home the charge against the accused from the evidence of complainant-Chhotubhai Dodia, PW 1. He is engaged in the business of Powerloom Textiles in the GIDC at Umargaon. He has depaosed that

about 20 to 22 workers are working in his factory. Deceased Rajendrakumar Yadav as well as the accused were also his workers. According to him, on the day of the incident, while he was sitting at Tharola Laboratory, at about 7 p.m., worker Sharauddin informed him about the incident that the accused dealt knife blow to Rajendrakumar Yadav and has fled. On getting the said information, he has rushed to the factory premises and saw the deceased lying in a pool of blood alive. He took the injured to Mamta Hospital, Umargaon. However, on the advice of Doctor, the injured was taken to Hariya Hospital at Vapi. However, the doctor declared the injured as dead. In his cross examination, he has stated that while taking the injured to Mamta hospital at Umargaon and from there to Vapi, during the 40 minutes of journey, he had not talked to the deceased. He has given details about the time taken for visiting the two hospitals and thereafter, lodging complaint. Nothing is alleged against the evidence of the complainant. He has performed his part of duty as a responsible employer. Thus the evidence of PW 6 corroborates the evidence of PW 1. After examining their evidence in detail, we do not find any discrepancies in their evidence. They have remained consistent on all material points. Once we accept the oral testimony of eye witness as well as of the convict which is substantive evidence, even if the prosecution has failed to bring on record the corroborative piece of evidence namely; proving inquest panchnama, discovery panchnama, that could not weaken the prosecution case. The panchas, PW 2 and PW 3 have not supported the prosecution to prove the inquest panchnama as well as the discovery panchnama. However, the police has proved the panchnama by recovery of muddamal knife through PW 7, Panch-Kantilal Shah.

10. Thus, taking an over all view of the matter, in our opinion, the prosecution has established the charge under section 302 IPC against the accused beyond reasonable doubt. Suffice it to say that we are in total agreement with the reasonings and the ultimate conclusion reached by the learned trial Judge convicting the accused for the said charge.

11. We accordingly dismiss the appeal. The judgment and order of conviction and sentence passed in Sessions Case No. 959 of 1995 by the learned Addl.Sessions Judge, Valsad dated 5.4.1997 is confirmed.

12. In view of the order passed in this appeal, no order is required to be passed in Criminal Misc.Application No.9301 of 2004. The Criminal Misc.

Application stands disposed of accordingly.

[Kshitij R Vyas, J.]

[Akshay H Mehta, J.]

msp